

# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Katy Allen

**SUBJECT: BID IRREGULARITY  
AIRPORT NORTH CONCOURSE  
EXCAVATION CONTRACT**

**DATE:** 05-13-04

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Approved

Date

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Council District: Citywide

## **REASON FOR SUPPLEMENTAL MEMORANDUM**

This report provides additional information regarding staff's recommendation to reject and re-bid for the Airport North Concourse Excavation Contract. This memo also addresses two issues raised at Council on May 11, 2004 regarding agenda item 8.1:

1. The ambiguity in the bid document requiring prequalification of shoring subcontractors.
2. The issue of providing consistent written information to all bidders.

## **BACKGROUND**

This is the first major project for the Airport Concourse Development. Considerable outreach was conducted with the construction industry and building trades to enhance the City's standard public works procurement practices in order to obtain the services of a high quality excavation contractor. A decision was made early in the design process to require that both general contractors and certain specialty subcontractors be prequalified. While prequalification of general contractors is becoming more common for large construction projects, it is not typical for public agencies to prequalify subcontractors because of its potential complexity.

The prequalification process began in November 2003. A formal process was used to secure qualification statements for general contractors and for the following subcontractors:

- Electrical Subcontractors
- Telecommunication Subcontractors
- Utility Subcontractors
- Shoring Subcontractors

When the prequalification phase was complete, a Notice to Contractors was published which listed the specific firms that had been prequalified for the selected work. The bid documents indicated that a prequalified general contractor could self-perform any of the work. The bid documents indicated that if a subcontractor was to be used for the Electrical, Utility, Shoring or

Telecommunication work, then the specialty subcontractor needed to be prequalified. The Notice to Contractors clearly states that "Specialty Subcontractors for other specialties need NOT be prequalified" (Exhibit A).

A pre-bid conference was held on March 18, 2004. Twenty-six verbal and written questions were responded to in writing by the City's construction management consultant. However, after that meeting and shortly before the scheduled April 1 bid opening date the City's project manager received a phone call from RGW, one of the prequalified general contractors. RGW indicated that they were planning on self-performing the shoring work, but that they were planning on using a subcontractor to install tiebacks. RGW indicated that they did not see any requirement in the specifications that required tieback subcontractors to be prequalified, and they asked the staff person to confirm that there was no requirement in the specifications for tieback subcontractors to be prequalified.

A tieback is a steel rod, drilled into the soil from an excavation. The soil shoring system is partially held in place by the tiebacks (see Exhibit B). There are various types of work required to install a shoring system, and it would have been difficult to draft the specifications to anticipate each of the many subcategories of shoring work that a contractor might potentially have elected to subcontract. Thus, the specifications provided only that shoring subcontractors were required to be prequalified and did not specifically provide that subcontractors performing any portion of shoring work were also required to be prequalified. Therefore, the specifications were silent on the question of whether tieback subcontractors were required to be prequalified.

Staff reviewed the documents, consulted with the management team, and confirmed that the specifications did not expressly require tieback subcontractors to be prequalified. Staff's interpretation of the documents at that time was that the documents did not require tieback subcontractors to be prequalified. Staff further believed that the documents were clear on this point, so an addendum was not necessary. This information was communicated to RGW, however it was not communicated to the other bidders because staff determined that it was not a change nor a clarification to the documents. Staff's intent was that only the principal shoring subcontractor be prequalified, and it was not intended to require that any other specialty subcontractors needed to be prequalified.

Subsequent to this communication, the bid opening date was postponed for two weeks for unrelated issues. During this time an addendum was issued to address multiple technical items. One of the items was related to subcontractor listing requirements. A new bid form was issued that required the listing of all subcontractors doing more than ½ of 1 percent of the work for Electrical, Utilities, Telecommunication and Shoring disciplines, regardless if the subcontractor is a lower tier subcontractor (i.e., a subcontractor to a subcontractor) (Exhibit C). While this form required the listing of the subcontractors, the form did not change the basic requirement that only Electrical, Utilities, Telecommunication and Shoring subcontractors had to be prequalified. While this form does not expressly require that tieback subcontractors be listed, tiebacks can be construed to be a part of the shoring work, so one interpretation of the form is

that tieback subcontractors should be listed on the form and must be prequalified. However, this was not the intention of the form.

This new form, combined with the silence on the issue in the specifications as originally drafted, caused an ambiguity that conflicted with the language in the Notice to Contractors regarding prequalification of subcontractors. Bids were opened on April 15, and the issue arose regarding the question of whether tieback subcontractors were required to be prequalified. Two bid protests were received. Staff's initial evaluation of the bids was that RGW fully complied with the intent of the specification because they were planning on self-performing the shoring work, and there was no express requirement for tieback subcontractors to be prequalified. However, tiebacks are a component of the shoring system, and it was therefore unclear whether tieback subcontractors were required to be prequalified under the specifications. This ambiguity is the basis for staff's recommendation to reject all bids and rebid the excavation contract.

## **CONCLUSIONS**

The integrity of the bidding process is paramount. Staff takes very seriously our commitment that bidders have consistent and reliable information that ensures a level playing field with utmost clarity for process and deliverables. Staff's practice is to always provide clarifications to contractors in writing regarding substantive questions that are raised during the bidding process.

The City has had an excellent track record at issuing high quality construction documents without ambiguities. Since July 2002, we have recommended 205 construction contracts for awards. This is the second project during that period where staff has made a recommendation to reject all bids on the basis of an ambiguity in the bid documents. The prequalification process for this project was considerably more complex than the normal process for procuring bids. Prequalification of subcontractors has never been attempted by the City before, and the uniqueness of this new process is one major factor in staff's recommendation to use a conservative and cautious approach by rejecting all bids and re-bidding the project to ensure that there is a level playing field for all bidders.

For this particular contract, because of the ambiguity in the specifications and the communications process, and because the bidding of this project was unique and complex compared to standard projects, staff is recommending that bids be rejected to ensure that all prequalified general contractors bid have the same understanding of the requirements.

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## **COORDINATION**

This memo was coordinated with the City Attorney's Office and the Airport Department.

KATY ALLEN

Director, Public Works Department

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g: Council/Bid Irregularities

Attachments (3)